

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

January 25, 2013

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:02 p.m. in the Council Chambers, 200 East Main Street, on January 25, 2013. Members present were James Griggs, Thomas Glover, Janice Meyer, Joe Smith, Noel White and Barry Stumbo, who agreed to Chair this meeting in the absence of Vice-Chair Kathryn Moore. Others present were Jim Gallimore, Division of Traffic Engineering; Chuck Saylor, Division of Engineering; Jim Marx, Zoning Enforcement; and Tracy Jones, Department of Law. Staff members in attendance were Jimmy Emmons, Bill Sallee and Wanda Howard.
- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the November 30, 2012 and December 14, 2012 meetings would be considered at this time.

Action – A motion was made by Ms. White, seconded by Mr. Griggs and carried unanimously (Moore absent) to approve the minutes of the November 30, 2012 meeting.

Action – A motion was made by Ms. Meyer, seconded by Mr. Smith and carried unanimously (Moore absent) to approve the minutes of the December 14, 2012 meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Swearing of Witnesses** – The Chair asked those wishing to testify at today's hearing to stand at this time. He then administered the oath to members of the audience.
- B. **Sounding The Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **A-2012-62: CLYDE SIMMONS, JAMIE SHIER, AMY CLARK, SHERRI HUMAN and KAREN BASSETTI** - appeal for an administrative review of the Division of Building Inspection's issuance of a permit for paving in the required front yard, in a Single Family Residential (R-1E) zone, within the defined Infill & Redevelopment Area, at 626 Kastle Road (Council District 3).

As this is a 3rd party appeal, there is no recommendation for either approval or disapproval. A report will be made at the public hearing.

- b. **A-2013-2: WILLIAM KEVIN MURPHY** - requests an administrative review of the Division of Building Inspection's issuance of a permit for a deck in a Two Family Residential/Historic District Overlay (R-2/H-1) zone, at 137 West Bell Court (Council District 3).

As this is a 3rd party appeal, there is no recommendation for either approval or disapproval. A report will be made at the public hearing.

Mr. Emmons said that the staff had received communications from both of these appellants requesting withdrawal of this appeal. He said that the staff had just received an e-mail from the applicants, requesting withdrawal of the first appeal. Mr. Emmons said that Mr. Murphy had also recently submitted a letter requesting withdrawal of A-2013-2. No action was required by the Board.

2. **No Discussion Items** - The Chair asked if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The

appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

- B. **Transcript or Witnesses** - The Chair announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2013-7: DARYL RAY SLUSHER** - appeals for a variance to reduce the required side yard from 3 feet to 0 feet in order to allow security fencing to remain as constructed in a Planned Neighborhood Residential (R-3) zone, at 2716 to 2724 Green Valley Court (even numbers only) and 2717 to 2725 Bay Cedar Cove (odd numbers only) (Council District 2).

The Staff Recommends: Approval, for the following reasons:

- a. Reducing the required side yard from 3' to 0', only for the purpose of allowing the preexisting portion of the fence to remain where currently located, should not adversely affect the public health, safety, or welfare, nor alter the character of the area. From the street view, similar fences are common in the general vicinity.
- b. The configuration of the lots and the location of the fencing create a common shared rear yard among these six homes, allowing individuals to live independently, yet share a common open space. It is an uncommon and unique living arrangement, which is a special circumstance that contributes to justifying the side yard reductions.
- c. Strict application of the Zoning Ordinance would result in all portions of the fence to be relocated to the rear of the structures, allowing open access to the water spigots located in the side yards, which have been the target of past acts of vandalism. Forcing this particular property owner to comply with side yard setback provisions of the Zoning Ordinance would result in a hardship to the property owner due to the loss of security that the fencing currently provides.
- d. A fencing permit was obtained prior to construction; however, the restriction on the side yard fencing was not printed on the paper copy of the permit which the appellant relied upon during construction of the fence. There was not a willful violation or other attempt to circumvent the requirements of the Zoning Ordinance.

This recommendation of approval is made subject to the following condition:

1. The fencing shall remain where currently located, as depicted in the submitted application and site plan.

Representation – Mr. Daryl Ray Slusher was present for his appeal. Mr. Stumbo said that the staff had recommended approval of this appeal with one condition, and he asked Mr. Slusher if he would agree with that one condition. Mr. Slusher replied in the affirmative.

Discussion – Mr. Griggs asked if Fire Department concerns were one of the reasons that this condition

was recommended. Mr. Emmons replied affirmatively, and said that the intent of the regulation was to keep at least six feet between the houses where only 3' side yards are permitted. He said that in this case, the six houses are being used together with one common rear yard, and that it was a unique situation. He said that one of the reasons that this arrangement was made was due to the desire to better protect the homes from some past acts of vandalism, including using the water spigots to damage the homes. He said that the variance was justified for the reasons elaborated on in the staff report.

Mr. Griggs asked if the submitted site plan was accurate, as it appeared that the fencing was in place in the side yards, roughly halfway between the front and back corners of the houses. Mr. Emmons said that the appellant should answer that question, as he was much more familiar with the existing conditions.

Mr. Griggs said that he was concerned that the fence would impede the ability for fire protection for these properties, as that was one of the reasons for the regulation. Mr. Sallee placed a graphic on the overhead projector to explain the rationale for this zoning restriction. He said that he remembered this text amendment from years ago, and its purpose. He said that some homes can be as close as 6' apart in R-1E and R-3 zones, and the Commission considered whether or not this spacing was "too close." He said that this 6' separation does meet the minimum Building Code setback requirements, but other jurisdictions increased their side yard spacing requirements at that time. He said that the Fire Department was reporting that they were having difficulty navigating through 3' yards during emergency runs, trying to get to the rear yard, when fences were midway between houses that were only 6' apart. This was especially a problem when there were air conditioning units also in their way. The zoning regulation was then modified to require these fences not to be erected in the side yards, but behind the houses, at their rear corners.

Mr. Griggs said he was still confused as to how the Fire Department would gain access to the rear of these homes, when a solid stockade fence was installed between these houses. Mr. Emmons replied that there were a few gates in between some of the houses. Mr. Griggs asked if the gates were locked, and if not, how the proposed security of these properties would be resolved. Mr. Emmons said he was unsure.

Mr. Griggs said that he didn't know why the appellant couldn't secure the spigots, and move the garden hoses indoors. He said that moving the connecting fences to the rear corners of the houses would keep the Board from setting a precedent, and still allows the Fire Department to access this rear yard area. Mr. Slusher replied that the vandalism concern was that they broke the entire outside spigot off. That allowed the damage to the inside of the homes.

Mr. Griggs asked if these homes were on slab foundations. Mr. Slusher replied affirmatively, and said that he had some photographs he wished to show the Board. He said that it was his understanding that if the Fire Department could access the eave of the home, then they were satisfied in the fences remaining in their current locations. He said that they would be able to access these homes. Mr. Griggs asked how they could access the rear yards of these homes when a stockade fence would impede their access to these rear yards. Mr. Slusher replied that there are screened-in porches in the rear of each home, and that the fences would still allow access.

Mr. Griggs said that he did not believe that there were unique circumstances with these properties, and that there would not be a great deal of expense involved in moving these fences farther back. He asked Mr. Slusher if he would be responsible for the cost of these fence relocations. Mr. Slusher replied that he would not, and that when the fence permits were first issued, he did not see any instructions or limitations that the fences had to be installed at the rear corners of these houses, and he was used to reading all the notes on the permits. He said that the 3' side yard fencing restriction was not outlined on the permit. Mr. Griggs said that he noted that in the staff report, and he sympathized with Mr. Slusher, and he did not think these circumstances were the result of his negligence.

Mr. Griggs said that it is the Board's responsibility to protect the community if there is a Building Code or fire safety issue. He said that these six homes are owned by the church, and they are not paying any taxes on the property, so there is probably an opportunity for them to reimburse Mr. Slusher on the costs of these fence relocations. Mr. Slusher asked if the fences were moved back, then they would no longer be needed. He said that as is, they would not allow any greater access to the rear yards to the Fire Department.

Mr. Glover asked the staff to explain how the arrangement of these properties is unique. Mr. Emmons replied that all six homes are under the same ownership, and retired priests live in them independently,

but wish to share their private backyards. The staff concluded that this was a unique living arrangement, and he could not think of another similar example of shared open space. He said that this is not a typical fencing layout or living arrangement.

Mr. Glover asked if the short fence runs between the houses currently existed. Mr. Emmons replied affirmatively. Mr. Glover asked if there was a proposal for any new fencing. Mr. Emmons replied that there was no proposal for any "new" fencing. The appellant did receive a fence permit, and constructed the fencing. During the final inspection, the need for this variance became evident. The staff report outlined this progression in more detail. The staff felt that this application is the result of a series of unfortunate events, rather than any one particular event, or by-pass of the Zoning Ordinance.

Mr. Slusher asked to display the photographs of the rear yard. The Chair asked him to do so at this time.

Mr. Glover said he shared Mr. Griggs' concern about setting an unwise precedent with this appeal. He asked if the six deeds have been joined, and does the church own the properties in common. Mr. Emmons replied that the appellant submitted six deeds, indicating six distinct properties, for this application.

Mr. Slusher showed photos of the rear of the homes from the shared back yards. He said that the fence is almost at the rear corner of the homes, but was set a short distance from the corner in order to enclose the water spigots on the sides of these homes. He said that if he had known the restriction existed, he would have advised the Diocese that they would have to come up with another option for these fences. He said that the difference proposed was very small.

Mr. Glover asked if the staff could identify any safety issue with the images shown in the photographs. Mr. Emmons replied negatively, and said that they were comfortable with this request. He said that the staff did not poll the Fire Department during the staff review of this request.

Ms. Meyer said that the ownership of these six properties by the Catholic Diocese was a unique circumstance, in her opinion; but she wondered what would happen if any of these properties were sold in the future to individual entities. She said that the variance, if approved, would run with the land. Mr. Emmons replied that condition #1, although simple, was significant. He said that if any of the properties were sold into different ownership in the future, and they wished to put in their own individual fences, then they would need to fully comply with the Zoning Ordinance provisions. He said that any change in the fencing would not comply with condition #1 for individual properties, and as a result, would require full compliance with the Ordinance.

The Chair asked Mr. Emmons what the appellant would need to do if the variance was not granted by the Board. Mr. Emmons replied that they would need to rebuild the fence to meet all the Zoning Ordinance requirements.

Mr. Griggs asked if the portion of the fence that would then need to be rebuilt was the six-foot sections between the houses, and not the remainder of the fences in the rear yards. Mr. Emmons replied affirmatively, saying that it was only the portions between the side walls of the houses that would require relocation. Mr. Griggs said that if they were entirely in the back of the buildings, then they would be in compliance with the Ordinance. Mr. Emmons agreed.

The Chair asked Mr. Slusher if he had any comments prior to the Board's vote. Mr. Slusher said that the priests that live there now desire peace of mind about whether people would be able to damage the side yards and water spigots of their homes. He said that he was present to speak on their behalf for this reason, as he stood to actually make more money by moving the fences if the Board denied this request.

Mr. Glover asked the staff if the fences were moved to the rear corner of the homes, if that would meet the code. Mr. Emmons replied that Mr. Sallee's diagram illustrated that the fence, when between the side walls of the home, did not comply with this provision of the Zoning Ordinance. However, as the diagram illustrated, when a fence is located at the rear corner of each home, that does comply. Mr. Glover asked if this was part of the definition of the use. Mr. Emmons responded that it was, and that it also was a dimensional requirement of the Ordinance. Mr. Slusher said that if the fence had to be moved to the rear corners of these homes, then it would not be needed. He said that the side yards would remain open and accessible, and that the priests might have to hire a night watchman.

The Chair asked the Board if they had any opinions about moving the fencing. Mr. Glover said that he had some sympathy for the Diocese in trying to secure their properties and running into dimensional restrictions of the Zoning Ordinance at the same time. He said that this living condition was unique, and he understood the staff's recommendation for approval made on that basis. He said that he was inclined to reach the same conclusion. He asked if a second condition could be added, that this could be in place so long as the Catholic Diocese owned all six properties, understanding the concern that would result if these properties were sold off one at a time. Mr. Emmons replied that the Board could do so, as long as all six lots were in "common ownership" and not naming a particular property owner. This would be to reflect the fact that this appeal is for all six properties functioning as a collective unit. Mr. Glover said that he would be inclined to add this as a condition.

Mr. Griggs asked if the staff would speak with the Planning Commission about the necessity of this health and safety provision of the Ordinance. He said that if this restriction was no longer needed, then the Board should not be required to review such appeals, and instead, change the provisions of the Ordinance. Mr. Saltee replied that this provision had been in the Ordinance some 10-15 years, and there are not many variances granted to this requirement—perhaps as few as once per year.

The staff provided a draft of the second condition on the overhead projector at this time. It read as follows:

"2. Provided that all six lots remain in common ownership."

Mr. Glover said that he favored the additional condition. The Chair asked Mr. Slusher if he was in agreement with the new condition. Mr. Slusher replied affirmatively, and said that he would make the Diocese aware of this. He said that it was his understanding that the residents would be priests, and that the properties would not likely be sold or transferred.

Action – A motion was made by Mr. Glover, seconded by Ms. White, and carried 5-1 (Moore absent, Griggs opposed) to approve **V-2013-7: DARYL RAY SLUSHER** – an appeal for a variance to reduce the required side yard from 3 feet to 0 feet in order to allow security fencing to remain as constructed in a Planned Neighborhood Residential (R-3) zone, at 2716 to 2724 Green Valley Court (even numbers only) and 2717 to 2725 Bay Cedar Cove (odd numbers only) for the reasons provided in the staff report, and subject to the two conditions presented at this meeting

2. **V-2013-8: JUSTIN JONES** - appeals for a variance to reduce the required front yard from 30 feet to 12 feet to allow an off-street parking space in a Single Family Residential (R-1C) zone, at 682 Springhurst Drive (Council District 11).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance will not adversely affect the subject or surrounding properties; nor will it affect the public health, safety, or welfare. It will not alter the character of the vicinity or cause a nuisance to the public, since many other properties in this vicinity also park their cars in the driveway in front of the required off-street parking space as there is adequate on-street parking to accommodate any overflow parking that may result.
- b. Granting this variance will not allow an unreasonable circumvention of the Zoning Ordinance since the requested variance will allow the property owner to retain a parking space behind the building line, while utilizing the attached garage area for living space.
- c. The subject property was platted and developed prior to the adoption of the current Zoning Ordinance, particularly Article 16-4(a), which now requires the parking space to be located on the lot behind the building line.
- d. Strict adherence to the Zoning Ordinance would necessitate the re-conversion of the garage area to the required parking space behind the building line, but does not actually require the property owner to park in the garage. In this instance, not allowing the conversion will be a hardship because "the size and layout of the house will not accommodate both a home office and additional bedroom."
- e. The requested variance is not the result of a willful violation of the Zoning Ordinance. The applicant was unaware that a permit was required prior to construction, and has halted the construction in progress until such time as the Board approves the requested variance to allow the required parking space to be in the driveway.

This recommendation of approval is made subject to the following conditions:

1. That all applicable permits, including a Zoning Compliance Permit for a home office use, and a Building Permit for the conversion of the garage to livable space be obtained from the Divisions of Planning and Building Inspection prior to the continuance of construction.
2. That at no time shall a vehicle be parked in the driveway in such a way that the public sidewalk is obstructed.
3. That this variance only applies to the provision of the required off-street parking space and does not allow the construction of any structures otherwise allowable by the Zoning Ordinance.
4. That an administrative action minor subdivision plat be submitted and approved by the Division of Planning prior to the issuance of a building permit.

Representation – Mr. Justin Jones was present for his appeal. The Chair asked Mr. Jones if he had read the staff report and recommendation. Mr. Jones replied affirmatively. The Chair asked Mr. Jones if he would agree to abide by the recommended conditions. Again, Mr. Jones replied in the affirmative.

Discussion – Mr. Griggs asked about the size of garage, and how it could be considered “useless” as stated in the submitted application. Mr. Jones replied that it is not the size of the garage that makes it useless, but rather, the opening of the garage, as it is only 8’ wide. He said that his vehicle is too large to place it in the garage. Mr. Griggs said that 8’ doors are fairly standard, as are 12’ by 20’ garages, which are being built in this day and time. Mr. Jones said that inside his door opening was only 1’-1.5’ from the opening on the left side of the garage, which did not allow enough room to exit his vehicle, especially if there was equipment such as shovels, paint cans or snow sleds along that wall. Mr. Jones said that the garage was not “even” in that the passenger side had more room than on the driver’s side.

Mr. Griggs said that in reviewing the submitted application, there is a statement that 50% of the homes have converted one car garages into living spaces, and he asked Mr. Jones if this is an accurate number. Mr. Jones replied that it was in his opinion, give or take 10%. Mr. Griggs said that, when driving down this street, he could only identify about three homes where the garages had been converted into living space, not counting Mr. Jones’ home. Mr. Jones replied that he was counting the entire Southland area, not just Springhurst Drive, and in retrospect, he could have stated that a bit differently in his application.

Mr. Griggs asked the staff to explain the home mentioned in the staff report that had received a similar dimensional variance. Mr. Emmons replied that the property across the street, and caddy-corner to this one, was granted a similar variance in 1991. In that particular instance, they not only enclosed the garage, but they also constructed a carport to cover the driveway. The staff took that case into account in reviewing this application. The practical implication for this case is that with or without the variance, the appellant could park their car in their driveway.

Mr. Griggs asked if the staff was concerned with the precedent set by the approval of this application. Mr. Emmons said that he had re-read the Zoning Ordinance in the 1950s when the Springhurst subdivision was originally developed. He said that at that time, there was no requirement that the one required off-street parking space had to be behind the required building line. There were requirements that a garage had to be behind the building line, but not the driveway parking space. He said that this was an important bit of information about the era the subdivision was developed, that also had a bearing on this case.

Mr. Griggs asked Mr. Jones how this construction advanced so far without the benefit of a building permit. Mr. Jones replied that he worked for a number of years for different contractors. He asked family and friends about the need for permits for renovation work in their homes. He was told by those family and friends that they had done considerable remodeling in their homes without the benefit of a permit. He went online and did learn, after the fact, that in fact, a permit was required. He said, however, that at this point in time he has a \$1,700.00 custom window installed where his garage door used to be, which he is not willing to put on the curb.

Mr. Griggs said that the optimal solution would have been to make an addition to the rear of the home and leave the garage as it was. Mr. Jones said that this would have involved a much greater expense. Mr. Griggs said that with his background in construction, he should have known a building permit was required, and that this is a bothersome case for that reason. Mr. Jones said that there are households on other streets in this neighborhood that have done what he had done.

Action – A motion was made by Ms. White, seconded by Ms. Meyer, and carried 5-1 (Moore absent,

Griggs opposed) to approve **V-2013-8: JUSTIN JONES** – an appeal for a variance to reduce the required front yard from 30 feet to 12 feet to allow an off-street parking space in a Single Family Residential (R-1C) zone, at 682 Springhurst Drive as recommended by the staff, and subject to the conditions recommended by the staff.

C. **CONDITIONAL USE APPEALS**

1. **C-2013-1: STEVE HEAD BUILDER, LLC** - appeals for a conditional use permit to expand an existing church (addition to Church of Athens parsonage) in the Agricultural Rural (A-R) zone, at 6991 Athens-Boonesboro Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The small addition to the parish house will be located near the rear of the existing church facilities, and will not be readily visible from Athens-Boonesboro Road due to the topography and landscaping. There is no change proposed to the church use of this property, which has been in operation for nearly 40 years.
- b. All necessary facilities and services are available and adequate for the proposed use, provided the septic system is determined to be adequate for the proposed expansion.

This recommendation of approval is made subject to the following conditions:

1. The site shall be developed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy of the building.
3. The septic system shall be inspected by the Fayette County Board of Health prior to construction to determine its adequacy relative to the proposed construction.

Representation – Mr. Steve Head was present for his appeal. The Chair asked the appellant if he had read the staff report and their recommendation. Mr. Head replied affirmatively. The Chair asked if he would agree to abide by the recommended conditions. Again, Mr. Head replied affirmatively.

Citizen Comment – There were no citizens present to comment on this request.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs and carried unanimously (Moore absent) to approve **C-2013-1: STEVE HEAD BUILDER, LLC** – an appeal for a conditional use permit to expand an existing church (addition to Church of Athens parsonage) in the Agricultural Rural (A-R) zone, at 6991 Athens-Boonesboro Road, for the reasons provided by the staff and subject to the three recommended conditions.

2. **C-2013-3: GREG WALKER / TRACE INVESTMENTS, LLC** - appeal for a conditional use permit to establish an outdoor recreational facility ("pumpkin farm" activities) in the Agricultural Rural (A-R) zone, at 3898 - 4054 Haley Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as this proposed use will be seasonal in nature, with the month of October expected to be the peak of the fall season.
- b. Adequate space is available on this property to accommodate the proposed uses without encroaching upon any environmentally sensitive areas, and to accommodate significant use setbacks from the neighboring residential/farm use at 3880 Haley Road.
- c. All necessary public facilities and services are available and adequate for the proposed use. This property is well situated near the I-64 interchange for easy access without overburdening the rural road system. Furthermore, an existing private road will serve as the primary spine for traffic during the operation of this pumpkin farm. This should further release traffic pressures on Haley Road.

This recommendation of approval is made subject to the following conditions:

1. The outdoor recreational use shall be operated in compliance with the submitted site plan and application, provided that all portions of this conditional use (not including allowable agricultural uses) shall be located at least 250' from the southern property line of 3898 Haley Road.
2. All necessary permits, including a Zoning Compliance Permit and/or a Grading Permit, will be

- obtained from the Divisions of Planning and Building Inspection, respectively.
3. Activities associated with the pumpkin farm, shall remain outside of the environmentally sensitive area (labeled as a "soil type floodplain" on the final record plat) and will be at least 60' from the shared property boundary with 3880 Haley Road.
 4. The seasonal outdoor recreational uses shall only operate between Labor Day weekend and Thanksgiving weekend during the fall season.
 5. Off-street parking shall be provided on or within 20' of the areas identified as "existing pavement" on the submitted site plan.
 6. Any roadside stand, allowable for this property by Article 8-1(c)(4) of the Zoning Ordinance, shall be located more than 250' north of the southern property line of 3898 Haley Road, but also within 75' of the areas identified as "existing pavement" on the submitted site plan.
 7. Verification from the Fayette County Health Department that no septic system is needed to accommodate the use shall be provided to the Division of Planning prior to issuance of a Zoning Compliance Permit.
 8. This use shall become null and void should any of the five lots be sold into separate ownership.

Representation – Mr. Richard Murphy, attorney, was present for the appellant. He submitted three letters of support to the staff, and those letters were circulated to the Board members at this time, along with the site plan submitted as part of their application. Mr. Greg Walker was present for this appeal, as well.

Mr. Murphy said that he had discussed the proposed conditions with the staff, and that they were proposing changes to condition #1 and #6. Mr. Murphy said that Mr. Walker, along with his father, Randy Walker, had developed the adaptive re-use project along National Avenue, and had turned it into a desirable artistic and craft area. He said that Mr. Walker had grown up on Haley Pike, and that both Mr. Walkers now reside on Haley Pike with their families. One of their properties, at 3700 Haley Pike, is protected further by the Purchase of Development Rights program.

Mr. Murphy said that this current application is for an outdoor recreational facility. He wanted to allay a rumor circulating in the neighborhood that this proposed use was for a shooting range. This proposal did not involve a shooting range, but caused some confusion because one of the uses listed in the Zoning Ordinance as a shooting range. He said that the use proposed was for a pumpkin patch with hay rides, a corn maze, children's activities, a playground and pumpkins for sale.

Mr. Murphy said that the farm is currently an open space, but there is illegal dumping and unauthorized vehicular parking on the property currently. Surrounding neighbors have been supportive of their application, partly in the hope that these activities would be curtailed. The immediate neighbors to the south and the west have submitted letters of support.

Mr. Murphy said that he wished to address Condition #1, and said that he believed there was agreement with the staff in amending this condition. As listed, it is in conflict with the 60' spacing requirement of Condition #3. The agreement would be to change Condition #1 to also have a 60's separation, instead of the 250' setback listed currently in #1. He said that they had spoken with the adjoining neighbor, who required no buffering, and was enthusiastic about their proposal. He said that the 60' buffer would be appropriate, and he believed that the staff was in agreement with that change. Mr. Emmons confirmed that the staff was in agreement to change Condition #1 to require a 60' buffer, instead of the 250' one listed. He said the revised condition would now read as follows:

1. The outdoor recreational use shall be operated in compliance with the submitted site plan and application, provided that all portions of this conditional use (not including allowable agricultural uses) shall be located at least 60' from the southern property line of 3898 Haley Road.

Mr. Murphy said that Condition #6 dealt with the requirement for the roadside stand, which is an allowable accessory use for the farm. He displayed the submitted site plan, and oriented the Board to the location of the subject site. He said that the way the condition is worded; the roadside stand must be placed within close proximity to the existing paved roadway, which posed a logistical problem for their use. They would prefer to have the stand located near the cabin and the barn deeper into the farm. The visual focus of the property is the cabin, as there are a number of trees located near it and the barn. It would be the main headquarters for the activities on the farm. He said that they would rather sell the pumpkins near the cabin, as that will keep the focus of the farm's activities in one area on the property.

Mr. Murphy said there was also a practical matter guiding the stand's location. He said that pumpkins are heavy, and that if the stand was located near the parking area, then patrons would have to carry them around the farm. If located near the cabin area, then the staff could assist the public in carrying them to the parking area. He said that it makes more sense to have it located near the cabin, for these reasons.

Mr. Murphy said that they understood that the allowable use was for a roadside stand, but in the definitions section of the Zoning Ordinance, there was no requirement as to how close the use had to be to the road. He said the use would comply, but it could be located near a gravel drive does connect the parking area to the cabin and barn area. He said they would be agreeable to locating the stand within 75' of that gravel drive, even though it might not all be in the barn and cabin structures. A 200' spacing would clearly allow it to be located in the cabin. This would work much better for this property, in this circumstance, to allow the cabin area to remain the focus of their conditional use. He said that while they would prefer the roadside stand to be within 200' of the gravel drive shown on their site plan, they would agree to it being within 75' of that same historic driveway, if the Board preferred.

Questions – Mr. Griggs asked if this was a seasonal activity. Mr. Murphy replied affirmatively. Mr. Griggs asked which conditions addressed that factor. Mr. Murphy replied that condition #4 would require it to be so limited, and conducted between Labor Day and Thanksgiving weekends.

Mr. Griggs asked about the children's activities, and if they would include inflatables and similar items. Mr. Murphy replied that Mr. Walker would initially "take it as it goes" and evaluate this part of the operation as it evolves. He said that other similar uses have corn mazes, and stacked hay bales that allow for a slide. He said that lassoing hay bales, decorated as deer, for instance, might also be provided.

Mr. Griggs said that, without any restrictions or guidelines, this use could evolve into something akin to Bluegrass Fair. He said that a Committee had been working toward a text amendment for the past year on agri-tourism uses, but their work had not yet concluded. He said that there may need to be some limitations placed on this use, to keep it controlled and appropriate. Mr. Murphy placed an item on the overhead projector, which he described as a matrix he had obtained from that Work Group. He said that it indicated the types of uses that had, at least on a preliminary basis, been deemed appropriate in each zone. He said that for the agricultural zones, it would allow many uses which they were proposing, and that their proposed uses were included in this matrix. Mr. Griggs, also referring to the matrix, said that "children's rides" were shown as a prohibited use on this matrix. Mr. Murphy said that the playground activities proposed for this conditional use were all to be provided on a temporary basis at this location.

Ms. Meyer asked if the children's rides were currently a prohibited use in the A-R zone. Mr. Sallee replied that, independent of a conditional use, they would be prohibited in the A-R zone. He was not sure they would be automatically prohibited under this conditional use permit, unless the Board specifically prohibited them as a condition to their approval.

Mr. Murphy said he had discussed this with Mr. Walker, and he was not proposing children's rides as a major component of this activity. He said that it was difficult to be creative, but at the same time, be restrictive as to all of the possible activities.

Mr. Griggs said that he was not a member of the Work Group, but that he did attend several of their meetings. He thought that the matrix displayed by Mr. Murphy was the result of a lot of their hard work. He understood that this effort was going back to the Planning staff for work on specific definitions. He said that until this is done, all of the proposed activities may or may not be possible, in the end. Until that work was concluded, he felt that he could not support this application. Mr. Murphy said that he only displayed the matrix in an attempt to demonstrate that their proposed use would be consistent with the efforts of the Work Group. For instance, in terms of the proposed corn maze, their proposal was in line with the matrix recommendations.

Mr. Murphy said that their application was based upon the current Zoning Ordinance, and that Mr. Walker does not currently own this property. He has it under contract currently, and he would not have time to wait for the new ordinance to be prepared and adopted. He proposed to begin this use in the fall, so that is why they made this application. He said that they believed the staff was in agreement that all of the uses they wish to conduct at this location were permissible under the current Ordinance. They were not going to have Bluegrass Fair or amusement park types of rides at this site as Mr. Walker lives only four doors away from this site, and for years prior to that, resided only ten doors away.

Mr. Griggs asked Mr. Murphy if the appellant and the staff could work out a more detailed listing of all of the ancillary uses that were anticipated to accompany this conditional use. This would require the Board to continue this hearing to next month's meeting. Mr. Murphy replied that he would be out of town at next month's meeting.

After a brief pause to confer with Mr. Walker, Mr. Murphy said that the children's play area could be restricted to non-motorized vehicles, but even that restriction could be problematic, as tractors would be needed to conduct the hayrides. Mr. Griggs said that he was interested in learning what would be conducted there now and in the future. Mr. Murphy said that he had some photographs to illustrate their proposed activity. Mr. Griggs said that the other Board members may not be concerned with this request, but he was concerned about the possible uses at this location now and in the future.

Ms. Meyer asked how the children's rides could be better defined or limited. Mr. Emmons said that the staff did not have a definition available for that part of this use.

Ms. White asked if the appellant's request to use the cabin for the allowable roadside stand was possible. Mr. Sallee replied that the appellant had request a change to condition #6 to eliminate the words "existing pavement" and replace them with the words "existing gravel" and to increase the distance from 75' to 200'. Condition #6 would then read as follows:

6. Any roadside stand, allowable for this property by Article 8-1(c)(4) of the Zoning Ordinance, shall be located more than 250' north of the southern property line of 3898 Haley Road, but also within 200' of the areas identified as "existing gravel" on the submitted site plan.

Mr. Sallee said that the staff was not necessarily in agreement with this proposed change.

Ms. Meyer asked Mr. Murphy if he would agree to restrict motorized or "amusement park" rides from this conditional use. He replied that they would agree to do so. Ms. Meyer suggested that this be added as a ninth condition for approval. Mr. Sallee displayed the wording of that the new condition on the overhead projector, and said that it would read as follows:

"9. Activities shall not include motorized amusement park type of rides, except for hayrides."

Mr. Stumbo asked Mr. Murphy if the appellant would agree to this additional condition. He replied he believed that this restriction would work for their proposed operation.

Mr. Griggs asked if the revision to condition #1 would affect the proposed use to the cabin. Mr. Murphy replied that condition #6 addressed their proposed use of the cabin.

Citizen Comments – There were no citizens present to comment on this proposal.

Action – A motion was made by Ms. White, seconded by Mr. Glover, and carried unanimously (Moore absent) to approve **C-2013-3: GREG WALKER / TRACE INVESTMENTS, LLC** – an appeal for a conditional use permit to establish an outdoor recreational facility ("pumpkin farm" activities) in the Agricultural Rural (A-R) zone, at 3898 - 4054 Haley Road as recommended by the staff, and subject to the nine revised conditions.

3. **C-2013-4: GEORGE GILPEN** - appeals for a conditional use permit to expand an existing veterinary clinic in an Agricultural Urban (A-U) zone, at 1230 Armstrong Mill Road (Council District 8).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit will not adversely affect the subject property or surrounding properties. The proposed revisions to the site layout will allow for a modest expansion and modernization of the current veterinary practice, a business that has successfully operated at this location for over 30 years.
- b. All necessary public facilities and services are available and adequate for the proposed expansion of the use.

This recommendation of approval is made subject to the following conditions:

1. The site shall be developed in accordance with the submitted application and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Building Permit, shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy of the building.
3. The property shall be landscaped and screened in accordance with Article 18 of the Zoning Ordinance.
4. Any required storm water management measures will comply with the Storm Water Manual and be approved by the Divisions of Engineering and Water Quality, as appropriate.
5. The applicant shall maintain a six-foot high privacy fence along the parking area that adjoins the adjacent residential use.

Representation – Mr. Jack Stewart was present on behalf of the appellant. The Chair asked Mr. Stewart if he and his client had read the recommendations of the staff, and if the appellant would agree to abide by the five recommended conditions. Mr. Stewart replied affirmatively.

Citizen Comments – There were no citizens present to speak to this appeal.

Action – A motion was made by Mr. Griggs, seconded by Ms. Meyer and carried unanimously (Moore absent) to approve **C-2013-4: GEORGE GILPEN** – an appeal for a conditional use permit to expand an existing veterinary clinic in an Agricultural Urban (A-U) zone, at 1230 Armstrong Mill Road based on the staff recommendations and subject to the five recommended conditions.

4. **C-2013-5: PIKE SPRAGGINS** - appeals for a conditional use permit for a home occupation (modification and customization of hand-held tools) in a Single Family Residential (R-1C) zone, at 384 Ashmoor Drive (Council District 9).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. This proposed home occupation for the customization and modification of rubber and plastic handles is very limited, and is most similar to a sculptor's work or small appliance repair. Thus, it meets the requirements stated in Article 1-11 of the Zoning Ordinance. Adequate parking is available for this use, should the need arise. Noise, odor, excessive light and other disturbances are not anticipated with this use.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. This conditional use shall be operated in accordance with the submitted application and site plan.
2. All necessary permits, including issuance of a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection within 30 days of the Board's approval.
3. Because of the specific nature of this request, this conditional use shall become null and void should the appellant no longer reside at this location.
4. In as much as possible, customer traffic shall be discouraged from visiting the property.

Representation – Mr. Pike Spraggins was present for his appeal. The Chair asked Mr. Spraggins if he had read the staff report and recommendation. Mr. Spraggins replied affirmatively. The Chair asked him if he would agree to abide by the recommended conditions. Again, Mr. Spraggins replied in the affirmative.

Discussion – Ms. Meyer asked Mr. Spraggins to explain more precisely the use he proposed. Mr. Spraggins replied that he had developed a process whereby he can apply texture to rubber, plastic or polymer products that can't be applied in a mold. He is doing this on a very small scale, and in single item quantities. He didn't want to make a major capital investment until he can see if he could build a business for himself.

Ms. Meyer asked if he could provide an example of some of this work. Mr. Spraggins replied that if Toyota has a specific tool that is needed on a daily basis, and if it requires a grip or a specific texture for their workers, he can, by hand, apply a specific grip for such a tool that is more abrasive. He said that some molds do not allow for such customization.

Mr. Glover asked if this process was patented, and Mr. Spraggins replied negatively. Mr. Glover asked if he was taking a chance on this use. Mr. Spraggins said that he has a proprietary process and hopes to decide if he wishes to make an investment in it.

Citizen Comments – There were no citizens present to speak to this appeal.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover and carried unanimously (Moore absent) to approve **C-2013-5: PIKE SPRAGGINS** – an appeal for a conditional use permit for a home occupation (customization of hand-held tools) in a Single Family Residential (R-1C) zone, at 384 Ashmoor Drive, based upon the staff recommendation, including the four recommended conditions for approval.

5. **C-2013-6: EL POTRILLO MEXICAN BAR & GRILL** - appeals for a conditional use permit to offer live entertainment and dancing accessory to a restaurant/bar & grill in a Neighborhood Business (B-1) zone, at 1765 Alexandria Drive (Council District 11).

The Staff Recommended: Disapproval, for the following reasons:

- a. Granting the requested conditional use has significant potential to adversely impact a well established residential area located as close as 30' from the building to be used for live entertainment and dancing.
- b. The proposed late hours of operation, combined with the changing character of this use from a restaurant to a night club on the weekends has a significant potential to be a disruption to the neighborhood, and therefore, is inappropriate at this location.

Representation – The appellant was not present for this appeal.

Discussion – The Chair asked the staff if they had any information about this appeal. Mr. Emmons replied that just prior to today's meeting; he had spoken with the appellant, who indicated that she was no longer interested in pursuing this appeal. He said that he was expecting an e-mail from the appellant at any time, withdrawing this request. He said that he was aware that there were some objectors in the audience for this appeal.

Note: The Board discussed **V-2013-7: DARYL RAY SLUSHER** at this time, followed by other items on their agenda. Following the conclusion of **C-2013-5: PIKE SPRAGGINS**, the Chair returned to consideration of this appeal.

The Chair asked if the staff had any other information from this appellant. Mr. Emmons replied that he had not heard back from the appellant. He advised that since there was a citizen present to speak to this appeal, that the Board postpone this case until the February meeting. In the event the appellant withdraws this appeal before that meeting, the staff would note that on the Board's agenda. He was uncomfortable in proceeding on this appeal, given that the appellant was not present.

Mr. Griggs said that the Board should hear the testimony of the citizens that have been waiting for this case to be heard, so that they would not have to come back next month. Ms. Meyer and Mr. Glover said that they concurred with Mr. Griggs.

Opposition – Ms. Susan Griffin, a resident of Traveler Road, behind the portion of the shopping center where this use was proposed, was present to speak in opposition. The Chair said that the staff had recommended disapproval of this appeal, but that the Board was interested in hearing her comments.

Ms. Griffin said that she agreed with that recommendation. She said that her back yard backed up to this proposed use, but that she currently lives in a very quiet neighborhood. She said that this was a consideration when she and her husband bought their house eight years ago. She said that she was also speaking for her neighbors on either side, both of whom are in their 80s and could not be present for this meeting, as they are also concerned about this appeal.

Ms. Griffin said that she was concerned about employees and others smoking and congregating behind the nightclub and behind her home. As a property owner, she was concerned that their peace and quiet would be disturbed. She strongly agreed with the staff that this request should be disapproved.

Discussion – Mr. Griggs said that if the appellant were to appear next month, the Board members would

remember this testimony. Ms. Griffin thanked the Board for their consideration.

A motion was made by Ms. Meyer, seconded by Ms. White to continue consideration of **C-2013-6: EL POTRILLO MEXICAN BAR & GRILL** to the Board's February meeting.

Discussion of Motion – Mr. Glover said that he wanted Ms. Griffin to feel free to attend next month's meeting, if she was so inclined. Ms. Griffin said that she would call the staff to see if this item would be on next month's agenda. She asked what day the meeting would be held. Mr. Emmons replied that the meeting would be on the 22nd of the month.

The motion carried unanimously (Moore absent).

6. **C-90-45: CON ROBINSON CONTRACTING CO., INC.** - The Board of Adjustment has requested a revocation hearing for a conditional use permit to operate a commercial composting facility, due to failure to comply with imposed conditions in the Agricultural Rural (A-R) zone, at 4247 Georgetown Road (Council District 12).

The Board of Adjustment approved a conditional use permit for a commercial composting facility at its April 27, 1990 public hearing, subject to several conditions. Since that time, the applicant has been found to be in violation of the first condition, as it relates to operational details of the composting facility. The conditions imposed by the Board are as follows:

1. That the proposed commercial composting be operated in accordance with the submitted development plan, to be amended to show the following:
 - a. Location of employee mobile home;
 - b. Locate 30-foot wide buffer area around 22-acre site;
 - c. Correctly show existing fencing on the property; and
 - d. Add notes to plan concerning all aspects of the composting operation, site, transportation, date of Permit-By-Rule approval, odor, dust, erosion control/grading, insect and rodent control, well and pond information, and distance from residences in the area.
2. That no sign be erected on the subject property.
3. That the composting area be limited to a 22-acre site in the center of the 115-acre farm.
4. That the entrance to the property be chained off at the close of operating hours.
5. That no storage of semi-trailer trucks be permitted on the subject property.
6. That upon the revocation of the permit issued by the State Division of Waste Management, the conditional use will cease.
7. That the entrance and interior drives will be paved within twelve (12) months.

Representation – Mr. Con Robinson was present for this matter. The Chair asked the staff to give its report on the revocation of this conditional use permit.

Staff Report – Mr. Marx presented the staff's report on this revocation. He said that this is a complicated case with a lot of history. He said that copies of the staff report had been distributed to the Board.

Mr. Marx displayed an aerial photo of this 115-acre farm, located on the west side of Georgetown Road. He said that it is about ½ mile south of Iron Works Pike, and the farm is in the A-R zone. In 1990, the Board approved a conditional use permit for a composting operation for 22 acres of this farm. The 2010 photo showed a great deal of excavation and grading of this site. Mr. Marx displayed the seven conditions of approval associated with this conditional use permit. Mr. Marx said that the first condition – specifically Item 1.d, will be the heart of the issue at this revocation hearing. It required that notes be added to the site plan from the details of their operational plan. This meant that notes were to be added outlining all aspects of the proposed composting operation. The site plan was amended, pursuant to that action by the Board, and 12 notes were added to the site plan.

Mr. Marx then displayed the 12 notes on the overhead projector for review by the Board, and added that notes #2 and 12 were critically important to this case. Note #2 indicated that the type of process that would be used at this location would be the aerobic open windrow composting. Note #12 indicated the erosion control and the amount of grading to be done at this location. Mr. Marx quoted the last sentence of that note, which states: "Regrading would be minimal."

Mr. Marx, looking at Note #12, provided an aerial photo of the subject site, taken in 2007. He said that sometime between 2002 and 2007, a major excavation of the site began to take place. The photo showed the extent of the excavation. In 2008, the Division of Building Inspection staff took some photos of the property, which showed a three-acre area that had been subject to various excavations. The photos illustrated that some of the rock material had been processed by a rock crusher, and large piles of crushed rock were evident on the site in the photo. Another photo showed some of the extensive machinery and conveyors used in this operation, and yet another photo showed the stockpiles of dirt on the site, as the site had been scraped down to bare rock. Another photo displayed by Mr. Marx showed a building used for the storage of explosives, as a small sign marked "Explosives" was visible in the picture. He said that explosives were required to conduct this level of excavation. The next photo displayed the southwest corner of this 22-acre area, and indicated an elevation difference of about 22' in grade. The next photo, taken from the middle of the property, indicated about a 15'-20' change in elevation.

Mr. Marx said flat rock surfaces were visible in all of these photos and that these photos were indicative of the changes in elevation, the blasting that was necessary, the storage of rock material, the removal of top soil and the barren rock surfaces out in the open on the site. This was evidence that much more than minimal regrading took place at this location, and that was all that was supposed to happen there.

Mr. Marx said that a review of the original application indicated that grading would be done to take the site to less than a 5 degree slope, which was all that was indicated in the paperwork.

Mr. Marx said that for a three-year period of time, a recycling operation was being conducted at this location. He said it could be described as a "building materials salvage yard." He displayed a couple of photos of a "fairly elaborate" curved structure to accommodate processing of the demolition materials on-site. Another photo displayed one of about 40 large containers distributed about the property. Mr. Marx said that this type of operation is not permitted in the A-R zone, although some types of material recycling are allowed in I-1 and I-2 zones.

Mr. Marx displayed another photograph of the property from 2008, which showed a weigh station located on the subject property. He said this indicated an elaborate set-up for this operation.

Mr. Marx provided several photographs from 2012 of the property. The first indicated the extent of the flat rock surfaces that remain at this location. He said that there are no indications remaining of the recycling operation that was once located here. Another showed that the large piles of processed rock were no longer visible, but there were some smaller rock piles still evident.

Mr. Marx said that in 2010, when Mr. Robinson filed an application for a quarrying operation at this location, it was because there was documentation that rock material was being transported off site. That request was disapproved by the Board, so there had never been any authorization to sell quarried materials from this location. In the 2010 application, it was represented that the purpose for leveling the site was to allow for flat surfaces for composting operations. However, the 2012 photographs indicated that there were no composting operations occurring on this property, as evidenced by all of the hard surfaces.

Mr. Marx said the staff began receiving complaints in September of last year about large numbers of trucks transporting fill dirt and top soil off the site. He dispatched an inspector to the site; and on two separate occasions, on different days, the trucks left 4247 Georgetown Road to off-site construction locations where it was documented that the material was being sold. This constitutes a complete documentation of quarrying activities being conducted from this location since the Board denied the requested conditional use permit in 2010. Activity had continued from this location from 2010 to the present time.

Mr. Marx displayed a letter on the overhead projector to address Note #2, as mentioned earlier. The 2008 letter was from Con Robinson Contracting to the Kentucky Division of Waste Management, which is the state agency that is involved in permitting composting operations. The letter indicated that the windrow method of composting was being abandoned in favor of a more efficient method that required far less space and processed a greater amount of material. According to the letter, that new process involved a "massive tub grinder with an 860-horsepower engine." Mr. Marx said that this letter was evidence of an abandonment of the open windrow aerobic method of composting at this location.

Mr. Marx said that the staff had never seen this tub grinder on the Georgetown Road property, but that it was seen on the Cahill Road property owned by Mr. Robinson, where he conducts mulching and recycling, and probably some composting. He said that this machine was stationary while in operation, had an 860 HP engine, and a large claw that dumped the material into the tub. The material was then ground and sent out on a conveyor belt to form another stockpile. He said that this was not the method of composting approved for the Georgetown Road property in 1990.

Mr. Marx said that Article 8-1(d)(6)(a) describes the two types of composting that were permitted in the A-R zone as a conditional use. Those were the open windrow method and the static pile method of aerobic processing. He said that the operation outlined in Mr. Robinson's 2008 letter to the state might not even be the static pile method of composting. He displayed another item on the overhead projector from the National Engineering Handbook (Chapter 2: Composting) of the US Department of Agriculture's Natural Resource and Soil Conservation Service. This chapter is devoted to composting; and, according to this document, the static pile method "uses blowers that either suction air from the pile or blow air into the pile using positive pressure." He said that the flow of air is critical to the science of this process, and that it is needed for temperature control, moisture control and the control of micro-organisms. Mr. Robinson's tub grinder process did not allow air to circulate through the piles of material.

Mr. Marx displayed the next item on the overhead, which was from Bio-systems Solutions, a source of information from the industry perspective. That information stated that a "static pile was similar to windrow composting with the exception that the material is not aerated by turning, but rather, by forced air that comes from devices such as a perforated pipe laid under the pile." He said this also confirmed that there must be some system available to provide air to the pile of material.

Mr. Marx said that the last piece of information was from an environmental advocacy perspective, of sorts. He displayed information on the overhead projector from COOL 2001, which promotes environmentally responsible treatment of waste. They state: "aerated static pile composting maintains the composition by pushing or pulling air through the pile". It went on to state that "the use of the blowers and fans allows for larger piles – reducing land needs as compared to windrow composting."

Mr. Marx said that all three perspectives agreed upon this method. The staff concluded that the use of the tub grinder, without the use of an aeration system, is not the static pile method of composting. He said that, not only was Mr. Robinson's method not the one approved by the Board in 1990, but it was one not authorized by the Zoning Ordinance.

Mr. Marx said that these composting methods were considered extensively in 1988 and 1989, when the changes were made to the Zoning Ordinance to allow composting operations in the county. At that time, the Mayor appointed a 13-member committee to study these issues and draft this legislation. After that extensive evaluation, the committee only allowed these two types of composting in the A-R zone.

Mr. Marx displayed a table on the overhead, which showed that while converting to a more efficient method of composting, according to the 2008 letter to the state, the actual composting material that was processed at this location had declined dramatically over the past few years. The table was derived as a result of an Open Records Request from the Kentucky Division of Waste Management. Unfortunately, there were not complete records back to 1990. However, there was information for a number of those years. The table indicated the number of tons of materials processed, and from 1994-1998, the site was fairly active. In 1996, over 5,000 tons of material was processed at this location. For a few years, there was no material processed at this location at all; but beginning in 2007, there had been a dramatic decrease in the operation's productivity. The table also identified the production of the Creech composting facility, which showed activity of between 7,000-15,000 tons annually during the same time period. Mr. Marx said that, either compared to previous activity at this location, or to a similarly sized competitor (Creech) in the county, the composting at this Georgetown Road site had been greatly reduced. This information has raised the question as to what has been sustaining the business activity at this location.

Mr. Marx displayed a statement from Mr. Robinson's 1990 application to the Board on the overhead projector. It said that the "closure of the composting site shall entail removing all compost from the site and reseeded the land." Mr. Marx said that getting rid of the compost would be easy, but reseeded the land would be problematic, since there are several acres of land that have no soil. It will be a complicated endeavor to restore this land to a productive state.

Mr. Marx said that if the Board decides to revoke this permit, then an in-house team would need to be convened to develop a conceptual plan as to how this property would be restored, and then present it to Mr. Robinson.

Mr. Marx concluded by saying this evidence was substantial and compelling that Mr. Robinson had not complied with the conditions of the Board's approval in 1990. It had been difficult to acquire this evidence, as there has been a pattern of activities being undertaken without first obtaining the proper permits. He placed a table (Table 2: Timing of Activity Initiation Relative to Permitting) on the overhead projector that identified the different activities that had taken place on this property over the past several years. This identified that there were three major activities: the composting, the recycling activities, and excavation/grading/quarrying. He said if excavation of rock occurs on a site, and the rock is processed and transported off site, that is considered a non-coal mine by the state of Kentucky; and it requires a Non-Coal Mine Permit.

Mr. Marx said that, as for the composting activity, it began in August of 1987, and the Board of Adjustment approval was granted close to three years after that time. With regard to the recycling activities at this location from 2008-2010, that use was never permitted. At about the time the Board considered the request for a quarrying conditional use permit for this site, the recycling activity ceased. The quarrying activity began ahead of that application request in 2010, and yet it continued without a permit. Inspectors confirmed this by following the trucks leaving this location, and discovering that the dirt materials were being sold by Mr. Robinson. The land disturbance occurred prior to the issuance of a Grading Permit by the Division of Engineering on November 18, 2008. The grading permit was issued "after the fact." An "after the fact" permit such as this is issued to achieve "damage control" since so much of the property had already been graded. Mr. Marx said it was important to note that the issued permit did not authorize any of these activities. He said that the "non-coal mining" activity had been cited by the State in 2010, but also, that activity had never been permitted.

Mr. Marx said that these are the facts of what had transpired at this location. He said that there may be a concern about totally shutting down someone's business; but still, Mr. Robinson has a very active soil and mulch processing business on-going in an I-2 zoned property on Cahill Drive. It was an important factor in the Board's decision to note that, while this revocation would certainly impact his business, it would not totally shut down his local business, or affect his site on Cahill Drive at all. He said that the staff did recommend that the Board revoke the 1990 conditional use permit (C-90-45) for this location, for the reasons outlined in the four findings (a, b, c and d) presented and listed in the staff report.

Applicant's Presentation – Mr. Con Robinson was present to speak in opposition to this revocation, and he had several photographs to share with the Board. He began by saying that he had experienced flooding along the frontage of his property, and that the creek had never been cleaned out. He said he obtained a permit from the State to clean the entranceway of his farm from Georgetown Road, and displayed a before and after photo of that work on the overhead projector. Mr. Robinson said that this was done in an attempt to improve his property. He said it seemed that anytime he tried to improve his property, there were complaints made about those efforts.

Mr. Robinson displayed a photo of the windrow method of composting on his property, which was the method originally utilized, and which took up a great deal of space. He said he could not step on those fields in bad weather.

Mr. Robinson displayed a photo of a composter machine he used in turning the material and said that, at the time of its purchase, it was state-of-the-art. He said that it was new, and it did what was needed to use the windrow method. He displayed another photo of the tub grinder, and said that it was very portable. This machine allowed for much greater efficiency in composting, and it occupied much less area for the production of material. He said that the windrow method was very inefficient, and that it took up a lot of space. He said that he submitted the request to change to the tub grinder method to the State, which was approved, but he opined that he probably made a mistake by not also submitting the request to the City.

Mr. Robinson said that he had constant complaints about his operations. He said that the State inspected the entire site, and found that the water was flowing to his planned and constructed detention basins. He said that the State could not identify an odor problem, and he could submit that documentation, if necessary. Mr. Robinson said that the City actually employed the tub grinder method on its property. He said that they found the windrow method so inefficient, that they allowed their contractor to utilize the tub

grinder method, as well. Mr. Robinson distributed this information, on LFUCG letterhead, to the Board members.

Mr. Griggs asked if this was for the LFUCG operations on Manchester Street. Mr. Robinson replied in the negative, and said that this information was regarding the LFUCG operation on Haley Pike. Mr. Robinson said that the State Energy and Environment Cabinet's inspector also had provided information about his operation, which Mr. Robinson also distributed to the Board. The Board members read the materials at this time.

Mr. Robinson displayed photographs of the Creech operation, which utilizes a horizontal grinder for the compost material. He said that the horizontal grinder is also not a part of the windrow method of composting, and the photos displayed stockpiled compost materials at the Creech facility, as well. He said that utilizing these grinders can reduce the size of the material significantly. He said that his amount of material had decreased by 2/3 – directly due to the use of a tub grinder. He said that after the grinding of the material, it must still cure.

Mr. Robinson said that he gave away a significant amount of material from his property, but it was in an attempt to make his operation as efficient as the Creech composting operation. He said that some federal funds had been made available for the set-up of that facility, where he had no such assistance. He displayed a photograph of a flat surface where the composted material was stockpiled at the Creech site, and he said that it was a "nice, clean operation." He said he was trying to "get there" with his operation, and displayed a photo of his flat, 22-acre site. He said that he had a 5% grade on his site, which allowed the area to drain to his detention basin.

He displayed a photograph of the tub grinder he utilized for the composted material, and said that it demonstrated how clean his composting operation was, as well. He said he was active in his composting business, working on it every day, and that he was always trying to improve it. He said that the reductions in processing material were a result of the use of the tub grinder.

Opposition – Mr. Don Todd, attorney, was present representing Mr. Bill Wofford and Rim Rock Farm, which are adjacent to this property. He complimented the staff's report, and said that they "covered all the bases" in this instance. He said that they also covered many of the issues that he and his client had shared with the Board back in 2010.

Mr. Todd displayed several photographs at this time. The first two were of the windrow mulching system used on a farm off Russell Cave Road. He said that 505 Farm did not need to remove the topsoil from their farm to utilize this method of composting. The material is periodically heated to help break down the material into mulch. He said that this method was fully understood in the 1996-97 timeframe when the Zoning Ordinance was amended to allow this conditional use. The intent was to provide an opportunity for this type of work to be done locally.

Mr. Todd noted the staff's previous information that Mr. Robinson's composting operation originally began without the benefit of a permit. He said that a permit was issued, after the fact, to allow this operation on the subject site. He said that in 2010, he had told the Board that Mr. Robinson asks for forgiveness, and not for permission.

Mr. Todd said that the mulch operation was a pretext for the quarrying of rock and the sale of top soil from this site. He said that other photographs he had for the Board to review were to illustrate the scope of the mining activity and the extent of the rock and soil that have been sold off this site. He said that the numbers illustrated this, since, over time, the amount of compost material had significantly been reduced. He said that this is the type of activity the civic leaders tried to prevent when the Composting Ordinance and the Mining & Quarrying Ordinance were passed in the 1990s.

Mr. Todd said that several construction companies were hauling the rock and dirt from the site. He said that after being notified of this being impermissible, Mr. Robinson revived this activity once again a few weeks later. As a result, the Board was now considering a revocation of the original Conditional Use Permit, which he said should be done. Mr. Todd said that, most importantly, in considering this situation, the City would be viewed in light of whether or not there was an ability to enforce the Ordinance. He said that this was a case that should end in such an enforcement action. He also said that the reclamation of the site was also an issue to consider. He said that the staff had a good idea that this task needed to be

performed, as outlined by Mr. Marx.

Mr. Todd said that the Board should revoke the permit, otherwise it could be viewed that a conditional use permit is a license to do "whatever you want" on a piece of property. He said it is tough to do, but the Board needed to "stand its ground" in this case.

Mr. Todd said that the activities at this location included trucks travelling on and off the site at all hours, and dynamiting a site atop the Royal Spring aquifer; and that that makes this an environmentally sensitive area. Mr. Todd wondered if there was a detention basin on this property; and if there was, whether or not it was functioning properly, with all of the changes in grade that had occurred on the site.

Mr. Todd noted that Mr. Robinson had made no mention of the recycling activities that had been conducted at this location, or about the storage of dynamite, or the lack of permits or inspections. Mr. Todd asked the Board to consider taking the necessary steps in this case, and to also consider the necessary steps to see that this property is properly reclaimed, for the benefit of the neighboring property owners.

Discussion - The Chair asked Mr. Robinson if he wished to specifically address the quarrying activities, the sale of soil and the commercial use of the property. Mr. Robinson reiterated that he has been trying to give this material away in order to achieve the desired grade on his property; and that, on occasion, a fee was charged to load the donated material in a truck when necessary. Mr. Robinson admitted, when asked by the Chair, that he has sold dirt; and when he was told not to sell any material that was processed by a machine, he said he immediately stopped doing that. He told the Board that he had an air quality permit and had sold some of the equipment. For clarification, Mr. Stumbo asked whether Mr. Robinson had sold any of the rock. Mr. Robinson responded that he had done so, in the past. He said what he was trying to do was help finance grading this site to get it to a really nice condition, noting that a similar composting site had the benefit of federal funding or grant money.

In response to an earlier comment by Mr. Todd, Mr. Robinson said when the inspectors with the KY Department for Environmental Protection (Division of Waste Management) came to the site, there were no violations observed with respect to runoff, and the retention basin was functioning properly (i.e., no discharge off site), as indicated in the inspection report (dated 11/9/2012) that was distributed to the Board. He said all of the permits applicable to his operation had been posted on a board but were placed in a mailbox at the request of the City. He said he subsequently found those documents strewn all over the ground (by parties unknown); and that he advised the City by letter about the incident.

Mr. Glover inquired whether the grading permit Mr. Robinson obtained was used to remove the topsoil and rock from this site. Mr. Robinson responded affirmatively. Mr. Glover then asked if the grading permit allowed excavation to the extent that was done at this site. Mr. Robinson responded that people get grading permits and haul off site all the time, which he also had done. He noted that he didn't dig any holes; and that it was an exaggeration that 15-20 feet of rock was removed from the site. He said, as stipulated, he hired an engineer to draw up the plans for the retention area that was constructed; and that any runoff flows in the direction of the retention area. Mr. Glover asked whether Mr. Robinson was disputing the fact that this is a quarrying operation. Mr. Robinson responded that he was just trying to achieve the finished grade he desired; and that he didn't want to reclaim the site because he was in the compost business. He reiterated that the reduction in the amount of composting material processed was due to the more efficient tub grinder method.

Mr. Glover noted having no objection to the idea that the grinding method of composting is superior to windrowing. He said he didn't think the issue was whether grinding or windrowing is the appropriate method of composting; but, rather, if Mr. Robinson was using the grading permit to conduct a quarrying operation on this site. He spoke about having visited the site when he first became a Board member, and that he had given Mr. Robinson the benefit of the doubt with respect to the original conditional use appeal. However, he said it now appears to him that Mr. Robinson is overreaching the parameters of the grading permit to conduct quarrying activities on the site.

In response, Mr. Robinson said that you can have different elevations when you're trying to achieve a grade, but he only wanted to achieve one certain grade. He argued that it would not be difficult to regrade the site, noting that people haul in topsoil and regrade all the time; and that he would be getting dirt that was available from a construction site on Citation Boulevard. He said he will blend the topsoil with the

compost.

Mr. Glover inquired whether Mr. Robinson had reached the grade that he wanted to achieve. Mr. Robinson responded that he was headed in that direction, and that he had established the grade he wanted right now. Mr. Glover asked how long Mr. Robinson had tried to achieve that grade. Mr. Robinson said when his conditional use request for a quarrying operation was denied by the Board two years ago, he has been removing the dirt and working to establish a certain grade. He reiterated that it takes longer to do this when you don't have any funding at all.

Citizen Opposition - Mr. Bill Wofford, owner of the Rim Rock Farm, was present. He read a letter to the Board and for the record that he submitted to the *Lexington Herald-Leader* regarding the unsightly condition of the site adjacent to his property, and the inability of the City to curtail the (illegal) activities conducted by Mr. Robinson. He thanked Mr. Marx for his assistance with this matter when he contacted the Zoning Enforcement staff.

Mr. Wofford spoke about the initial conditional use request for a composting facility that was approved in 1990, despite the large number of objectors that were present at the meeting; and that this activity had been conducted prior to the Board's approval of a conditional use permit. He noted Mr. Robinson's flagrant disregard for the zoning laws, his neighbors, the integrity of the environment and the city government as well. He felt strongly that the decimated site should be returned to its original condition. Mr. Wofford then spoke about the extent of the damage to his house (several cracks), the limestone dust that was killing the trees and the effect of the noise disturbance (on horses and riders), all of which were the result of the use of dynamite at the site. He referenced the letter he provided at the original hearing from a realtor stating that the value of his property would be impacted significantly. He related to the Board that there also was opposition to Mr. Robinson's request in 2010 for a conditional use permit for his quarrying operation, which was denied; and that huge quantities of processed rock, as well as dirt, were being transported from the site and sold without the proper permit(s) to do so. In addition, Mr. Robinson was involved in an unauthorized recycling operation on the property at one point.

Mr. Wofford went on to say that Mr. Robinson thought he was above the law, having only received a "slap on the wrist" for the unauthorized activities he was conducting; and that the Board needs to make an example of him. Mr. Wofford urged the Board to put a stop to this and thanked them for their time.

Mr. Glover wanted to make sure that Mr. Wofford understood that the Board of Adjustment could only grant, refuse or revoke conditional use permits; and that the Board could not fine or require more than they are authorized to do by statute. Mr. Wofford replied that he understood and appreciated the Board hearing this matter.

At the Chair's request, Mr. Robinson responded, first apologizing for the cracks in Mr. Wofford's house. He said the people that did the blasting for him are certified blasters; and that they had always set up a seismograph before any blasting was done. He said they had gotten all the proper permits, and he offered to provide copies to the Board.

Ms. Knox van Nagell was present on behalf of the Fayette Alliance. She said the Fayette Alliance strongly supported the staff's recommendation to revoke the conditional use permit for commercial composting at 4247 Georgetown Road. She asked the Board to review the letter that was distributed to them and submitted for the record for their complete position statement. She said the Planning staff and Mr. Todd had thoroughly covered the factual and legal implications of this case. However, she emphasized the need to substantially reclaim the environmental conditions of the subject property if the area/aerial photos shown were any indication of the extensive excavation that has occurred there. She spoke about a particular type of the oldest limestone found only in the Bluegrass region of Kentucky, which is the source of our prime Bluegrass farmland and grows at a rate of only 1 inch every 500 years. She said it would take Mother Nature at least 12,000 years to restore the rich topsoil that Mr. Robinson has removed from his farm without the proper permits; and it was questionable whether the soils could ever be restored on the farm because much of the limestone base has been removed.

Ms. van Nagell said, while the Fayette Alliance is not against composting and mining operations per se, those activities must be operated in accordance with the requirements of the Zoning Ordinance and other applicable laws – which, in this instance, the contrary was true. She said planning and zoning laws are only as good as their enforcement; and that LFUCG should investigate what it must do to prevent similar

cases from happening in the future. She commended the Planning staff for their steadfast dedication in identifying the land use abuses involved in this particular case and urged the Board to not only revoke the permit, but also to use their power to recommend a comprehensive, timely and diligent reclamation of the property.

Discussion (cont'd.) - At this time, the Chair asked for any questions or comments from the Board.

Ms. Meyer inquired whether the Board had the ability to include reclamation requirements/conditions in conjunction with the revocation of the conditional use permit, if they chose to do so. Mr. Marx responded that he thought it wouldn't be a condition or a finding of revocation, but rather a statement of what would be expected in terms of reclamation. It was his opinion that this wouldn't be something the Board could require as part of the revocation.

Mr. Glover commented that he didn't think the Board wanted to exceed their authority, or put any decision they make in jeopardy by exceeding the authority that they have. He said the Board was not the police force or the enforcement arm; and they didn't have the power to fine or to impose a condition to require reclamation. He trusted that there are other government agencies that have the authority needed to enforce whatever the Board decides.

Mr. Todd responded that he thought Mr. Glover was correct, in that the Board didn't have the power to issue fines. He suggested to the Board that if they do decide to revoke (the permit), that they make the recommendation to LFUCG, whether it be Building Inspection, the Law Department or whomever, to take appropriate steps to require reclamation and to work in concert with State authorities that he assumed have ultimate control on that issue.

Since there were no further questions or comments, the Chair called for a motion.

Action – A motion was made by Mr. Glover and seconded by Mr. Smith to revoke **C-90-45: CON ROBINSON CONTRACTING CO., INC.** (a conditional use permit to operate a commercial composting facility in the Agricultural-Rural [A-R] zone at 4247 Georgetown Road) for the four reasons recommended on page 6 of the staff report (as follows), and for the violation of the 7 conditions that were imposed in the original conditional use permit.

Reasons for Revoking Conditional Use C-90-45:

- a. Excavation and grading within the 22-acre composting site has far exceeded what was authorized by the Board when the commercial composting conditional use was approved for Con Robinson Contracting Co., Inc. on April 27, 1990 (C-90-45). As noted on the approved development plan (note #12), only minimal grading was to be undertaken. Actual grading has been extensive (often facilitated by use of explosives) and is more appropriately described as excavation, resulting in elevation changes of up to 22' and removal of rock and dirt material.
- b. The open windrow method of composting, required by note #2 on the approved development plan, was abandoned on or about June 26, 2008 and was replaced by use of an 860 horsepower stationary tub grinder. The grinder processes raw material from large piles rather than rows, and the piles are not aerated by pipes or other ventilation systems. This method of composting was not contemplated with the Board's 1990 conditional use approval and does not qualify as either open windrow or static pile aerobic processing, which are the only two methods allowed per Article 8-1(d)6.a. of the LFUCG Zoning Ordinance.
- c. Much of the 22-acre site that was supposed to be used for composting has been used for illegal quarrying and recycling activities for extended periods of time. Quarrying activity has continued up to the present time (November 2012) despite the Board's disapproval on October 29, 2010 of a conditional use request for a temporary quarry (C-2010-99: Con Robinson).
- d. Staff observations on site and very low volumes of composting material processed as reported by the State Division of Waste Management support that very little of the 22-acre site has actually been used for composting over the past ten years. Continued operation of a low volume composting facility within a 22-acre area that has been extensively disturbed by unauthorized excavation, quarrying and non-coal mining activities will lead to on-going enforcement problems, and ultimately complicate and compromise efforts to restore the land to a minimally altered condition as prescribed by the Board's 1990 approval of a conditional use for commercial composting. Given the extent of unauthorized activity that has taken place within this 22-acre site, immediate and uncompromised efforts need to be

taken to begin the reclamation and restoration process.

Mr. Stumbo inquired whether Mr. Glover wanted to attach any conditions or a recommendation, as Mr. Todd suggested. He said he agreed with Mr. Glover and was very sensitive about getting into an area where the Board has no authority.

Mr. Glover said he would rather not attach any conditions because, as stated earlier, he did not want to put any decision of this Board in jeopardy in the event that they may have exceeded their authority. He thought there were other entities that were aware of the situation and concerned enough about the operation that they would not let this matter go unattended.

The pending motion for revocation carried unanimously (Moore absent). Mr. Stumbo noted that the conditional use permit has been revoked; and that Mr. Marx would take it from here.

E. **Administrative Review**

None

IV. **BOARD ITEMS** - The Chair announced that any items a Board member wished to present would be heard at this time.

- A. **Election of Officers** - At the January meeting each year, the Board shall elect a Chairperson, a Vice-Chairperson, a Secretary and any other officers it deems necessary. Nominations shall be made from the floor, and the candidate receiving the majority vote of the membership in attendance shall be declared elected and shall take office at the close of the meeting. Current officers are as follows: Chair - Vacant; Vice Chair - Kathryn Moore; Secretary - Jim Griggs.

Mr. Griggs said, as the Board discussed previously, he wished to nominate Mr. Stumbo as Chair, Kathryn Moore as Vice-Chair, and (retain) himself as Secretary. He said if that slate was suitable to everyone, he would move that the Board adopt it.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover and carried unanimously (Moore absent; Stumbo recused himself) to elect the slate of officers as presented.

- B. In the past, the duties of Secretary have been delegated to the Planning Manager or a staff member appointed by the Planning Manager. The Chair requested action on this item.

Action – A motion was made by Ms. Meyer, seconded by Ms. White and carried unanimously (Moore absent) to delegate the duties of the Secretary to Mr. Sallee, Planning Services Manager or a staff member appointed by him.

V. **STAFF ITEMS** - The Chair announced that any items a Staff member wished to present would be heard at this time.

- A. **C-2012-37: THE LEXINGTON PROPERTY GROUP, LLC** - The Board of Adjustment approved a conditional use permit for a fraternity house in July of 2012 at 320 Rose Street, subject to several conditions, one of which was a 6-month review to determine compliance with conditions and if there had been any adverse impact to surrounding properties.

Mr. Emmons informed the Board that the fraternity house never exercised its conditional use permit; and therefore, the 6-month review was not needed, nor was any action from the Board.

- B. **House Bill 55 Training Opportunity** - Mr. Emmons said there would be an APA audio conference held in the Division of Planning conference room on Wednesday, February 13 at 4:00 p.m. The title of this audio conference is "Fracking and Resource Extraction and Community Planning" and will count toward 1.5 hours of

training credits.

- VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be February 22, 2013.
- VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 3:50 p.m.

Barry Stumbo, Chair

James Griggs, Secretary